

votes to get a confirmation? The Senate responsibly, wisely, backed away from that position.

I urge my colleagues, come to the floor, state your concerns. If you have additional questions, I guess there is still time to get some answers. But we need to have an up-or-down vote on this nominee this week. He has been pending since May 9, 2001, as have some other very qualified nominees for the Federal judiciary. How long is enough? How much time do you need to review the record and look at the credentials, the qualifications of a nominee?

It is actually embarrassing, the way the questions are being raised about this nominee, that we wouldn't give this nominee an overwhelming and perhaps unanimous confirmation to this position. Is it a fear that this brilliant, young Hispanic who has lived and taken advantage of the American dream might some day be recommended for the Supreme Court? Is that what is going on here? If it is, why don't we at least wait and worry about that when he gets nominated to the Supreme Court.

He is qualified. He will be an outstanding Federal judge. I urge my colleagues to stop using very weak arguments about how maybe he didn't answer detailed questions about what his rulings might be in a hypothetical case. That is not usually the basis we use for voting against a nominee.

I thank Senator HATCH for the job he has done on the committee. I am glad this process is beginning to break loose now for men and women, minorities, who have been pending for close to 2 years and who deserve to be considered by the Senate. I wholeheartedly endorse this nominee and look forward to seeing the leadership he will provide on this particular circuit court of appeals.

I yield the floor.

RECESS

The PRESIDING OFFICER (Mr. SESSIONS). Under the previous order, the hour of 12:30 having arrived, the Senate will stand in recess until 2:15 p.m.

Thereupon, at 12:37 p.m., the Senate recessed until 2:15 p.m., and reassembled when called to order by the Presiding Officer (Mr. VOINOVICH).

NOMINATION OF MIGUEL A. ESTRADA, OF VIRGINIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT—Resumed

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. CORNYN. Mr. President, I have listened with great interest, and even great concern, to the debate that has taken place in this Chamber on the issue of Miguel Estrada's nomination to serve on the DC Circuit Court of Appeals, and I feel impelled to stand and explain the reasons why I think not only Miguel Estrada deserves confirmation by this body—indeed, he de-

serves a vote—but why I think the judicial confirmation process is broken and has fallen into a state beneath the dignity of this institution and this body.

Indeed, I think if you could characterize what has been going on with regard to this confirmation process, you could talk about “delay”—the fact that Miguel Estrada's name had been sent up for consideration by the Senate some 18 months ago, on May 9, 2001.

Second, I would choose the word “defeat” in talking about this nomination. It is clear the overarching objective of those who choose to oppose this nomination are those who wish to defeat President Bush on any and every front they can find, where they don't believe they will have to pay a political price.

You could also talk about “deny”—denying an opportunity for immigrants like Miguel Estrada, someone who is living the American dream, to serve in a position of public trust.

Finally, I will use the word “dispirit.” Clearly, there is an attempt to dispirit those who would offer themselves for public service, to make it so burdensome and so distasteful that they will choose not to offer themselves for public service.

So I believe much of this debate encompasses these four concepts: Delay, defeat, deny, and dispirit.

Now, how have opponents to Miguel Estrada's confirmation chosen to approach their opposition? First, I believe they have used scare tactics. The Senator from Massachusetts said the other day:

When this or any other administration nominates judges who would weaken the core values of our country and roll back the basic rights that make our country a genuine democracy, the Senate should reject them.

And then we heard from the Senator from Vermont:

We see an emboldened executive branch wielding its rising influence over both Houses of Congress and ever more determined to pack the Federal courts with activist allies, to turn the independent judiciary into a political judiciary.

Mr. President, if either one of those statements were true, if I believed those accusations were supported by the evidence, I would not support this nomination, nor would, I believe, any Senator, Republican or Democrat, support this nomination. But I believe more than anything else that sort of rhetoric, unsubstantiated in fact, is proof positive this confirmation process is broken. And I say enough is enough.

Opponents of Miguel Estrada's confirmation claim he has an inadequate record. They claim he has little relevant practical experience. They claim because he would not engage with them in a debating tactic, asking him whether there is any Supreme Court decision with which he disagreed, and finally, they claim that he has not clearly stated his judicial philosophy.

In my remarks over these next few minutes, I hope to address each one of

those objections and show they are merely pretext for what is really going on here.

The American people know what is going on here, though, regardless of what Members may claim. They realize the judicial confirmation process in the Senate has become a game of political football, where the participants think they are going to score points against their opponent—Republicans against Democrats, Democrats against Republicans. But while the people who engage in this game of political football may believe they are scoring points, it is the American people who lose.

Again, I want to associate myself with the thoughtful remarks made the other day by the senior Senator from Pennsylvania who called for an end to the fingerpointing, the recriminations and the faultfinding. He called for the beginning of a new protocol, a new process that befits the dignity of this institution, one that would provide a timely, comprehensive, and efficient way to evaluate and vote on judicial nominees, regardless of which party is in power in the White House.

First of all, I want to address the objection that has been noted about Mr. Estrada's refusal to state a political position or ideological position on a whole range of issues that will, in all likelihood, come before him on the bench.

Everyone knows judges are not supposed to be politicians, running on the basis of a party platform, and, worse yet, everyone knows judges are not supposed to prejudge cases that may come before them. Why have a trial? Why have the adversaries in a court of law argue about what the facts are or what the application of the law to those facts should be if a judge is going to prejudge that case? That is not justice; that is the antithesis of justice and the dispassionate impartiality we expect from judges.

Every lawyer—and this body is chock full of lawyers—knows that cases are decided on the basis of the facts and the law, not—in a court of law, at least—on the basis of a political persuasion or an ideological position. Of course, Mr. Estrada is well within his rights to say, I am not going to prejudge a case because I do not know exactly how the facts may come before me; I do not know how the jury may decide the facts, and therefore I cannot tell you how the law may apply to that particular set of facts on a case-by-case basis.

Under our system of government, judges hold a very different job from that held by a member of the legislature or even the President, a member of the executive branch. Judges, if they are going to be true to their oath, if they are going to interpret the law, not make law, are bound by what this body says the law should be when we pass a bill or the President signs a bill into law, by the Constitution, and by precedents; that is, earlier decisions made by high court.